



Chairman: Mr. Erik SUY (Belgium).

**AGENDA ITEM 86**

**Report of the United Nations Commission on International Trade Law on the work of its fifth session  
(continued) (A/8717)**

1. Mr. BRENNAN (Australia) said that his country's geographical and trading position gave it a particular interest in the development of international trade, and hence in the work of the United Nations Commission on International Trade Law in which it had been happy to take part.

2. An encouraging aspect of the Commission's fifth session had been the approval of a draft Convention on Prescription (Limitation) in the International Sale of Goods (see A/8717, para. 21). It was true that the Commission had not reached a consensus on all the provisions, but in that field it was extremely difficult to meet the requirements of different legal systems. Broadly speaking, his delegation regarded the draft Convention as a satisfactory basis for a compromise solution. However, Australia had certain problems peculiar to federal States which it had pointed out during the Commission's discussions. The basic problem was to establish uniform legislation on prescription in the six States of the Commonwealth of Australia and that might take considerable time. His Government had asked that its views on article 17, which was the source of the difficulty, should be recorded in the commentary being prepared by the Secretariat. In that connexion, his delegation fully supported the Commission's decision (*ibid.* para. 20) to circulate the draft Convention and the commentary to Governments and interested international organizations for comments and proposals. It was very important that the scope of the uniform law on prescription should be the same as that of any new uniform law on sales. Moreover, the draft should be clear and simple and in a practical sense meet the needs of businessmen. It should be applicable to actions for annulment of the contract, especially since article 34 provided for States to make reservations on that point.

3. The definition of international sale, dealt with in article 2, should remain as close as possible to the definition of that term in the Uniform Law on the International Sales of Goods (ULIS) when revised. It was to be hoped that the Commission would be able to resolve that issue at its next session.

4. In article 3, there seemed to be a contradiction between paragraphs 2 and 3. His delegation preferred paragraph 2, which was simpler and eliminated any uncertainty, and thought that paragraph 3 should be deleted.

5. The representative of Iraq (1329th meeting) had drawn attention to the importance of article 7, which was an essential element in the draft. Uniformity on the question could only be achieved if domestic courts gave careful consideration to the interpretation and application of the Convention in other jurisdictions.

6. During the Commission's discussion of article 16 his country had raised the problem of a suit brought against the buyer by a sub-purchaser in a country where the limitation period was longer than that prescribed in article 8, as was the case in Australia. If such a suit was brought after the expiration of the limitation period prescribed in the draft, the buyer would have no recourse against the original seller. The problem might be solved by widening the scope of article 16 so that it would protect any buyer against any seller.

7. In view of the highly technical nature of the provisions of the draft, his delegation endorsed the Commission's recommendation (see A/8717, para. 20) that an international conference of plenipotentiaries should be convened to conclude a Convention on Prescription.

8. It hoped that the Working Group on the international sale of goods would continue to prepare proposals for the modification of ULIS so as to make the Hague Convention of 1964, to which it was annexed, acceptable to a greater number of States. The Working Group should seek to achieve clarity and should take account of present commercial practices.

9. With regard to the question of general conditions of sale, the Secretary-General had submitted to the Commission's fifth session a new report<sup>1</sup> based on the replies received from Governments. In general, his Government supported the principle of general conditions of sale and standard contracts, provided their use brought businessmen substantial advantages. To achieve that end the general conditions would have to be in widespread use in all countries and to improve on existing contractual arrangements. His delegation endorsed the decision taken by the Commission (*ibid.*, para. 43) on that question.

<sup>1</sup>A/CN.9/69.

10. His country was a member of the enlarged Working Group on International Legislation on Shipping, and was in favour of the systematic review of international shipping legislation. His Government had recently submitted a partial reply to the Commission's second questionnaire on the responsibility of carriers in the context of bills of lading. There should be a balanced allocation of risks between the carrier and the cargo owner. In that regard, it seemed that the International Convention for the Unification of certain Rules relating to Bills of Lading, signed at Brussels in 1924, amended by the Brussels Protocol of 1968, permitted a construction unduly favourable to the carrier. It was to be hoped that the Working Group, whose special session had just ended, would quickly achieve some positive results.

11. As a result of a proposal made by Australia at the Commission's fourth session,<sup>2</sup> the Secretary-General had submitted to the Commission at its fifth session a draft uniform law on international bills of exchange.<sup>3</sup> A small Working Group had been set up to prepare the final text of the draft uniform law and it had been asked to consider the desirability of extending the application of the draft to international cheques. From the outset the Working Group should take account of recent technological developments in payment methods and procedures.

12. The Special Rapporteur, Mr. Nestor, had submitted a final report on the question of international commercial arbitration to the Commission at its fifth session.<sup>4</sup> Australia endorsed the Commission's decision on that matter which was set forth in paragraph 87 of the report. The comments and suggestions of States members of the Commission on Mr. Nestor's proposals would enable the Commission to consider the question at its sixth session with all the facts at its disposal.

13. With regard to training and assistance in the field of international trade law, his Government wished to point out that under its bilateral training programme any Government might nominate a person to undertake a course in international trade law in Australia. Such a course might take a wide variety of forms, including attachment to an Australian private financial or commercial firm. All expenses would be paid by the Australian Government, provided of course a suitable course was available.

14. His delegation wished to express its pleasure at the progress achieved by the Commission and thanked the Secretariat for the assistance it had provided. It felt sure that the decision to publish the *Yearbook* of the Commission on an annual basis would prove of great benefit to the study and development of international trade law.

15. Mr. OTSUKA (Japan) said that he had a few brief comments to make on the Commission's report, which had been introduced with great lucidity and precision by its Chairman. He would first like to congratulate the

Commission on the work it had accomplished in preparing the draft Convention on Prescription (Limitation) in the International Sale of Goods. The draft was unique in that the Commission, seeking to establish international rules on the basis of compromise, had taken into account differences in the matter of prescription among national rules, in particular between the civil law system, which considered prescription a question of substance, and the common law system, which made limitations a procedural matter. His delegation wished to point out once again the close relationship which should exist between the rules on prescription and the uniform rules on the international sale of goods. It had hoped that the work on the international sale of goods would have been sufficiently advanced for the two drafts to be considered together. In any event, the preparation of the Convention on prescription was properly a matter for a conference of plenipotentiaries. In the meantime, his delegation felt that the work on the uniform rules for the international sale of goods should be advanced further.

16. The Working Group on International Legislation on Shipping had made substantial progress during the past year in its consideration of the three topics relating to bills of lading, and it should continue to study those very complicated problems, taking into account existing practices.

17. His delegation welcomed the decision to establish a Working Group on international negotiable instruments (*ibid.*, para. 61). However, since the funds and personnel available to the Commission were limited, the number of working groups should not exceed three or four. If the Commission's work was to be really productive, the results obtained in each case should be implemented without fail, and the Commission should maintain its work volume at an appropriate level. In that connexion, the proposal by the Spanish delegation<sup>5</sup> for improving the working methods of the Commission deserved due attention.

18. His delegation had no objection to the Canadian proposal made at the 1329th meeting that the Commission should undertake a study of the effect of the activities of multinational enterprises on international trade law, with a view to harmonizing and making uniform national private law in that field. However, care should be taken to avoid overlapping with the work being undertaken or to be undertaken on the same subject by bodies such as the Organisation for Economic Co-operation and Development and the United Nations Conference on Trade and Development, and the proposed group of experts should have the primary task of gathering factual information on the activities of multinational enterprises as related to the effects of such activities on international trade law.

19. Mr. HASSOUNA (Egypt) said that the report of the Commission, which had been introduced with great lucidity by its Chairman, showed that it had already achieved important results in connexion with the harmonization and progressive unification of international trade law. In particular, the draft Convention on Prescription (Limitation)

<sup>2</sup>See *Official Records of the General Assembly, Twenty-Sixth Session supplement No. 17*, para. 35.

<sup>3</sup>See A/CN.9/67 and Corr.1.

<sup>4</sup>A/CN.9/64.

<sup>5</sup>A/CN.9/L.22.

in the International Sale of Goods, once adopted, would contribute considerably to ensuring stable legal relations in that field. In drawing up the articles, the members of the Commission, working on the basis of the recommendations of the Working Group on Time-limits and Limitations (Prescription), had demonstrated a remarkable spirit of conciliation, as could be seen from the fact that they had reached agreement on the duration of the limitation period. The developed countries preferred a shorter period in order to avoid problems raised by delays in the settlement of disputes, while the developing countries as a whole preferred a longer period in view of the time necessary for inquiries, negotiations and arrangements for instituting legal proceedings, possibly in a distant country. Finally, the members of the Commission had agreed on a limitation period of four years, which might be extended or reduced in specific cases. However, on certain points it had not been possible to reach a consensus. In article 35, for example, it had been necessary to allow States the option of not applying the provisions of article 23, under which expiration of the limitation period should be taken into consideration in any legal proceedings only at the request of a party to such proceedings. In addition, it was regrettable that the Commission had not been able to reach agreement on the definition of a contract of international sale of goods and that article 2, paragraph 1, had had to be placed in square brackets. The draft convention should not be submitted to a diplomatic conference before the problem of that definition had been settled. The Commission should either have adopted a definition or had recourse to a definition set out in another instrument. However, it should be noted that, although it had not been possible to draw up a definition of an international contract of sale, article 33 of the draft Convention made it possible for Contracting States to declare that international contracts of sale would not be covered by the Convention because those States applied the same or closely related legal rules in the matter. That stipulation was undoubtedly very useful in view of the fact that the proposed Convention represented a compromise between States with different legal systems, and did not seem necessary in relations between States which applied the same rules. In addition, that solution made it possible to avoid conflicts between treaties. Finally, the article not only encouraged general unification but also promoted regional unification, which was of great importance to countries which were both neighbours and had closer ties, such as the countries of the Arab League. His delegation believed that the definitive formulation of the Convention on prescription should be entrusted to a conference of plenipotentiaries, in view of the highly technical and specialized nature of the subject.

20. The Working Group on the International Sale of Goods had already made considerable progress in its work and should prepare for its next session compromise texts which his delegation hoped would make it possible to resolve the issues left unresolved at the fifth session. The report prepared by the Secretary-General on general conditions of sale and standard contracts<sup>6</sup> was extremely

useful and his delegation looked forward with interest to the final study on the feasibility of developing general conditions embracing a wider scope of commodities, which was to be submitted to the Commission at its sixth session.

21. The Working Group on International Legislation on Shipping had done satisfactory work on the rules governing the responsibility of carriers. In that connexion, he wished to stress that any revision of the Brussels Convention of 1924 should take account of the fact that, due to advances in technology, the insurance risks of shipowners or carriers had greatly decreased over the past 50 years; that ought to result in a reduction in freight rates.

22. As to international payments, the preparation of a draft uniform law on international bills of exchange would be all the more useful because the draft would take account of current commercial practices in that field. His delegation thought that the draft uniform law should be extended to promissory notes, and welcomed the establishment of a Working Group on international negotiable instruments, of which Egypt was a member, which had been entrusted with the preparation of a final draft uniform law on international bills of exchange and promissory notes.

23. His delegation wished to stress the importance it attached to the procedure of arbitration, which was an effective means of settling disputes in internal and international trade. It considered that the report of the Special Rapporteur<sup>7</sup> constituted a good basis for the unification and harmonization of the law of international commercial arbitration.

24. His delegation also wished to stress the importance it attached to an effective programme of training and assistance in the field of international trade law, with special emphasis on the practical training which should be given to lawyers and government officials from developing countries. The response of the Governments which were members of the Commission to the Secretary-General's inquiry had been somewhat disappointing and the inquiry should be extended to all States Members of the United Nations. The convening of an international symposium of teachers of international trade law to discuss the role of universities and research centres would be particularly useful if representatives of the public and private sectors were invited to contribute their practical experience.

25. His delegation wished to congratulate the Commission on the progress it had made at each of its sessions, on the quality of its work and on its contribution to the development of legal rules for the equitable regulation of international trade.

26. Miss VEGA (Peru) said that she viewed with satisfaction the work accomplished by the Commission at its fifth session and wished to congratulate its Chairman on his very clear introduction of the report on that session.

<sup>6</sup>A/CN.9/69.

<sup>7</sup>A/CN.9/64.

27. Although her country was not a member of the Commission it attached the greatest importance to the work of that organ, because the regulation of international trade, which was growing at an increasing rate, called for international legal norms which took account of the different legal, economic and social systems, and particularly those of the developing countries, for trade was an important factor in those countries' development.

28. As to the draft Convention on Prescription (Limitation) in the International Sale of Goods, her delegation approved of paragraph 2 of the decision taken by the Commission (*ibid.*, para. 20) at its 125th meeting, in which the Commission requested the Secretary-General to prepare, together with the Rapporteur of the Commission a commentary on the provisions of the draft Convention which would include both an explanation of the provisions approved by the Commission and references to reservations by its members and to circulate the draft Convention, together with the commentary, to Governments and interested international organizations.

29. With regard to international legislation on shipping, which Peru considered a question of the greatest importance, especially for the developing countries, the Commission should pay particular attention to the interests of such countries, taking into consideration the economic and social differences which existed between States, and should continue its co-operation with UNCTAD in that field.

30. Her delegation, like that of Canada, felt that in the future the Commission should study the question of the influence of multinational corporations on international trade law and international economic relations. The existence of such corporations, whose share in world capital movements was far higher than that of many countries, and which, as UNCTAD had stated in its resolution 73 (III), controlled between 20 and 30 per cent of world production and trade, tended to increase the degree of dependency of the third world countries on the industrialized nations. Resolution 1721 (LIII) of the Economic and Social Council of 28 July 1972, in which the Secretary-General had been requested to appoint a group of eminent persons to study the role of multinational corporations, especially in the developing countries, and their implications for international relations, could provide Governments with much useful information on the subject. For its part, her delegation felt that it was the responsibility of each State to establish, within the limits of its jurisdiction and on the basis of its own conception of development, the operating conditions for multinational corporations, thereby making a fundamental contribution towards improving the relationships between developing countries and private foreign investment.

31. Mr. ZALDÍVAR BRIZUELA (El Salvador) thanked the Chairman of the Commission for his very clear introduction of the report of the fifth session of that body, which was of particular interest to delegations which, like his own, were not members of the Commission.

32. The draft Convention on Prescription (Limitation) in the International Sale of Goods was the product of considerable effort and of a praiseworthy spirit of compromise, although it had unfortunately not been possible to reach a consensus on, in particular, articles 2, 16, 17, 22, 30 and 31. His delegation supported the decision taken by the Commission at its 125th meeting to recommend that the General Assembly should convene an international conference of plenipotentiaries to conclude a Convention on the basis of the draft approved by the Commission, for it was fitting that so important a matter should be placed in the hands of experts.

33. The latest report of the Working Group on the International Sale of Goods<sup>8</sup> showed that there were still differences of opinion concerning the definition of certain terms relating to that subject. His delegation none the less hoped that the Group's work would be successful and that it would be able to submit a draft which would update and fill the gaps in The Hague Convention of 1964 and in ULIS, annexed to it.

34. With regard to general conditions of sale, it would be advisable to await the next report from the Commission, since that body had decided to defer final action until its sixth session on promotion of the general conditions drawn up under the auspices of the Economic Commission for Europe.

35. At the previous session, his delegation had welcomed the closer links which had been established between the working groups of the Commission and UNCTAD on the question of international legislation on shipping. At the current session, it noted with satisfaction that the new draft convention which was intended to replace the Brussels Convention of 1924 and the Protocol of 1968, was to be based on the carrier's contractual responsibility for the safe delivery of the cargo. That would result in lower freight rates for shippers, since the insurance risks of the shipowner or carrier had decreased dramatically.

36. With regard to the draft uniform law on international bills of exchange prepared by the Secretariat, his delegation shared the view that it should be extended to international promissory notes and it supported the decision to ask the Working Group on International Negotiable Instruments to consider the desirability of preparing uniform rules applicable to international cheques.

37. His delegation also supported the Canadian suggestion to ask the Commission to set up a working group to study the question of multinational corporations, in co-operation with the group established by the Economic and Social Council. The work of the Commission's group could be carried on without any particular priority as part of the Commission's normal work. In that connexion, his delegation had already stressed during the general debate of

<sup>8</sup>A/CN.9/62 and Corr.1 and Add.1 and 2.

the General Assembly (2061st plenary meeting), that the problem of underdevelopment should be dealt with at the international level and that one of the main solutions to that problem would be balanced international trade. His delegation had also suggested, as another solution, the idea of an international tax on carefully selected productive activities in which several countries took part, whether as holders of a right, as in the case of the exploitation of the resources of the international sea-bed, or because the activities in question covered several countries, as in the case of multinational corporations.

38. Mr. JACOVIDES (Cyprus) said his delegation had noted with satisfaction the progress made by the Commission in connexion with the draft Convention on Prescription (Limitation) in the International Sale of Goods, and its other fields of activity during its fifth session, which seemed to be the most productive session it had ever held.

39. His delegation supported the idea of convening an international conference of plenipotentiaries in 1974 to conclude a convention on the basis of the Commission's draft and comments submitted by Governments. His Government, for its part, would not fail to give careful consideration to the draft and would submit comments on it in due course.

40. With regard to the idea of having the Commission study the legal aspects of the activities of multinational corporations, he reminded the Committee that during the preceding session his delegation had described that idea as relevant and important and had expressed the hope that it would be given careful consideration by the Commission. His delegation was pleased to note that the Canadian delegation had brought its proposal forward again and that it had been well received in the Sixth Committee. With its field of competence, the Commission could certainly make a contribution to the study of that question. However, the Commission's activities in that area would have to be defined in the light of the broader activities of the study group established by the Economic and Social Council, which was to study all aspects of the activities of multilateral corporations, especially their economic, political and social aspects. Perhaps it would be wise to let the Council's study group proceed with its work before asking the Commission to study the legal aspects of such a complicated issue, especially in view of its very full programme of work. His delegation had listened with the greatest interest to the suggestion put forward by the representative of Kenya at the 1333rd meeting, whereby the Secretary-General would be requested to take the necessary steps to assemble general documentation of multinational corporations. The adoption of that proposal would enable Governments to have a clearer understanding of what they could and should do in that respect before asking the Commission to put the matter on its agenda. Perhaps the best procedure at the present stage would be to combine the Canadian and Kenyan proposals with a view to paving the way for future work while at the same time avoiding duplication.

41. Mr. YAÑEZ-BARNUEVO (Spain) said he wished to add to the statement he had already made at the 1330th meeting on the item under consideration, by making a few observations suggested by the Canadian proposal to ask the Commission to undertake a study of the activities of multinational corporations. The problem of multinational corporations was one which his delegation had already raised at the twenty-sixth session (1252nd meeting), when it had pointed out that the Spanish Minister for Foreign Affairs had introduced the concept of "Ibero-American" multinational corporations, which would be small and medium-sized corporations operating in Spain and in the Spanish-speaking American countries. Their multinational characteristics would stem from a comparable level of economic development among the countries concerned, on the similarity of legal concepts and ways of life in those countries and on the concept of dual nationality, which already existed in the case of individuals and would be extended to companies.

42. Multinational corporations, whose activities were, to all intents and purposes, uncontrolled by the various States concerned, constituted a very real problem. The word "non-national" had even been used in speaking about them to indicate that they were not subject to any real control by the countries in which they operated. Moreover, it should be pointed out that the term "multinational corporation" could lead to confusion when used to designate corporations with activities in different countries. Such corporations were not really "multinational" in that the power of decision was not distributed among different countries. Thus, it would probably be more correct to call them corporations "with international ramifications" or "trans-national" corporations.

43. Secondly, it should be noted that the corporations concerned were *de facto* in character and that it would be advisable to give them legal status by asking Governments to combine all their information on them with a view to devising mutually acceptable regulations governing their activities. Moreover, multinational public enterprises already existed in Europe; international organizations, such as the ILO and UNCTAD, were concerned with the question, and the Economic and Social Council had decided to establish a study group on it. The Commission could study some of the legal aspects of the question which related particularly to its field of competence. Therefore, as the Norwegian delegation had suggested (1332nd meeting), the Commission should be asked to consider the problem and report to the Sixth Committee during the twenty-eighth session of the General Assembly as to specific areas where it could be of immediate use and as to the priority it could give to the question. In addition, as the Kenyan delegation had suggested, the Secretary-General should be requested to collect some basic documents, starting with any information he might be able to obtain from States and appropriate international organizations. That would enable the Sixth Committee to take appropriate measures with regard to the matter, while avoiding any duplication of the study undertaken by the Economic and Social Council, some

aspects of which could, in fact, be extended and considered in greater detail.

44. He said he was convinced that multinational corporations were well adapted to some forms of production and distribution at the international level and that their impact

could therefore be beneficial provided that they were subject to a legal framework designed to avoid economic imperialism in any form.

*The meeting rose at 4.50 p.m.*